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UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF
CALIFORNIA

PATRICIA FILARDI, an individual,

Plaintiff,

v.

YUMMY DONUTS AND SUBS, a
business of unknown form; PAUL D.
SOTO and TANNIS D. SOTO, as
individuals and trustees of the P. AND T.
SOTO REVOCABLE TRUST DATED
MARCH 14, 2012; and DOES 1-10,
inclusive,

Defendants.

Case No. 5:18-cv-01847-CJC-SP

Hon. Cormac J. Carney

**JOINT REPORT PURSUANT TO
F.R.C.P. 26(f) and LOCAL RULE
26-1**

Plaintiff PATRICIA FILARDI (“Plaintiff”), and Defendant WILLIAM
UNG dba YUMMY DONUTS AND SUBS (“Defendant YDS”) respectfully
submit this Joint Report (“the Report”) pursuant to Federal Rules of Civil
Procedure Rule 26(f) and Local Rule 26-1.

1
2 **A. STATEMENT OF THE CASE**

3 **Plaintiff's Statement of the Case**

4 Plaintiff is an adult quadriplegic who uses a wheelchair for mobility. She
5 has a specially equipped van with a ramp that deploys out of the passenger side of
6 her van. Plaintiff is substantially limited in performing one or more major life
7 activities, including but not limited to: walking, standing, sleeping, ambulating,
8 and/or sitting. Plaintiff requires the use of a wheelchair at all times for mobility and
9 life functions. At the time of Plaintiff's visits to Defendant YDS' facility and prior
10 to instituting this action, Plaintiff suffered from a "qualified disability" under the
11 ADA. She has a Disabled Person Parking Placard issued to her on a permanent
12 basis.

13 Plaintiff personally visited Defendant YDS' Property on one occasion but
14 was denied full and equal access and full and equal enjoyment of the facilities,
15 services, goods, and amenities within Defendant YDS' facility, even though she
16 would be classified as a "bona fide patron." Specifically, she desired to visit the
17 subject property as a consumer, but experienced difficulty due to Defendant YDS'
18 failure to provide adequate access to the subject business and its interior.

19 It is alleged that Defendants own and operate the real property located at
20 1154 Brookside Avenue, Redland, CA 92373 (hereinafter "Property") where the
21 subject business (the "Business") is located. It is alleged that Defendant is liable to
22 Plaintiff for the alleged ADA violations.

23 The Business is a facility open to the public, a place of public
24 accommodation, and a business establishment. Instead of having architectural
25 barrier free facilities for patrons with disabilities, Plaintiff experienced the
26 following at the Business and Property: a buildup curb ramp that projects from the
27 sidewalk and into the disabled parking area (Section 406.5). Furthermore, the curb
28

1 ramp is in excess of the maximum grade allowed by ADAAG specifications
 2 (Section 406.1); there is no ADASAD compliant disabled van accessible parking
 3 signage in violation of Section 502.6; and, the curb ramp at the accessible parking
 4 space serving the stores main entrance projects into the access aisle in violation of
 5 Section 406.5 which requires that curb ramps and the flared sides of curb ramps
 6 shall be located so that they do not project into vehicular traffic lanes, parking
 7 spaces, or parking access aisles.

8 Plaintiff alleges that Defendant YDS violated Plaintiff's rights under the
 9 ADA and the Unruh Civil Rights Act. In addition to injunctive relief, Plaintiff
 10 seeks an award of damages of not less than \$4,000 per violation as well as
 11 deterrence damages arising out of Plaintiff's visit to the Property on or about April
 12 3, 2018 and for reasonable attorneys' fees litigation expenses, and costs of suit,
 13 pursuant to California Civil Code § 52.

14 **Defendant YDS' Statement of the Case**

15 Defendant YDS only runs a cubicle in a shopping center and claims that
 16 violations, if any, on other people's property is not a basis for litigation and that
 17 Plaintiff is responsible for all costs and attorney fees in this wrongful suit against
 18 Defendant YDS.

19 Defendant YDS denies all of Plaintiff's allegations in that their parking area
 20 is in compliance with current codes. Defendant YDS contends that other parties
 21 are responsible for Plaintiff's alleged injuries.

22 **B. SUBJECT MATTER JURISDICTION:**

23 The parties signing this Report, do not dispute this court has original
 24 jurisdiction over the federal questions and supplemental jurisdiction over the
 25 related state claims.
 26
 27
 28

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3 **C. LEGAL ISSUES**

4 **Plaintiff's Asserted Legal Issues**

5 The principal legal issues are: (1) whether the Defendant is responsible
6 under the law to remove/ remediate barriers; (2) whether the Plaintiff has standing
7 to seek either damages or injunctive relief; (3) whether Plaintiff was denied equal
8 access to the facility and; (4) the nature and extent of Plaintiff's damages.

9 **Defendant's Asserted Legal Issues**

10 Whether Defendant YDS is responsible for Plaintiff's injuries;
11 Whether other parties are responsible for Plaintiff's injuries;
12 Whether Plaintiff sustained any injuries and the nature and extent of those
13 injuries.

14
15 **D. PARTIES, EVIDENCE, ETC.:**

16 **Plaintiff:** Plaintiff anticipates no additional parties. Plaintiff anticipates one
17 expert witness as to accessibility. Plaintiff anticipates using an inspection report of
18 Defendant's Property as a key document.

19 **Defendant:**

20 Parties:

21 Defendant YDS; Defendants Soto

22 Evidence:

23 Evidence includes, but is not limited to: Codes for handicapped accessibility
24 areas in Redlands, California, remodeling and prior construction documentation,
25 proof of ownership of the area at issue, medical report and billings for injuries
26 sustained by Plaintiff.

1 **E. DAMAGES**

2 **Plaintiff:** Plaintiff foresees statutory damages of not less than \$4,000 per
3 violation arising out of Plaintiff's visit to the Property, \$4,000 for deterrence
4 damages Plaintiff is entitled to pursuant to *Johnson v. Guedoir*, 218 F. Supp. 3d
5 1096; 2016 U.S. Dist. LEXIS 150740 (USDC Cal, E.D. 2016), and for reasonable
6 attorneys' fees and costs of suit pursuant to California Civil Code § 52. Plaintiff
7 expects the probable range of damages to be between \$8,000 and \$12,000 plus
8 reasonable attorneys' fees.

9 **Defendant:**

10 Defendant YDS disputes all damages, and claims there are none.
11

12 **F. INSURANCE**

13 The Parties are unaware of insurance coverage applicable to this action.
14
15
16

17 **G. MOTIONS**

18 **Plaintiff:** Plaintiff does not believe he is likely to seek to add other parties
19 or seek transfer of venue. Plaintiff intends to conduct an expert led site inspection
20 to identify each barrier that would affect his type of disability and, then if
21 applicable, amend the complaint to ensure that the ADA claim reflects his intention
22 to have all unlawful barriers removed or remediated. This is the two-step process
23 permitted and required by *Doran v. 7-Eleven Inc.*, (9th Cir. 2008) 524 F.3d 1034
24 and *Chapman v. Pier Imports (US) Inc.*, 631 F.3d 939 (9th Cir. 2011). Plaintiff
25 anticipates filing a motion for partial summary judgment on the issue of duty and
26 liability under the ADA and the Unruh Civil Rights Act. This will happen after the
27 necessary depositions and inspection are taken in this case.
28

1 **Defendant:** A Motion to Dismiss will be made by Defendant YDS.

2
3 **H. COMPLEXITY**

4 This is not a complex case and the Manual for Complex Litigation is not
5 necessary.

6
7
8 **I. STATUS OF DISCOVERY**

9 The Parties have not yet undertaken discovery.

10
11
12 **J. DISCOVERY PLAN**

13 **Plaintiff's Proposed Discovery Plan**

14 Plaintiff proposes that the Parties exchange Initial Disclosures by February 14,
15 2019.

16 Plaintiff proposes a fact discovery cut-off date 18 weeks prior to trial in order
17 to allow adequate time to prepare dispositive motions and to allow for Plaintiff to
18 conduct an expert site inspection of the Property.

19 Plaintiff proposes an expert discovery cut-off date 8 weeks prior to trial.

20 Plaintiff intends to propound a set of Interrogatories, Requests for
21 Admission and Requests for Production of Documents; to take the deposition of
22 the Defendant and to conduct an expert site inspection as permitted and required by
23 *Doran v. 7-Eleven Inc.*, (9th Cir. 2008) 524 F.3d 1034 and *Chapman v. Pier*
24 *Imports (US) Inc.*, 631 F.3d 939 (9th Cir. 2011). Plaintiff intends to seek
25 discovery related to: (1) the ownership and maintenance of the Business and
26 Property, including the existence of any accessibility barriers and accessible routes;
27 (3) history of changes or modifications to the Business and Property; (4) the
28

1 feasibility of providing access to persons with disabilities.

2 **Defendant YDS' Proposed Discovery Plan:**

3 Defendant YDS proposes the parties will serve their Initial Disclosures as
4 designated by the trial rules no later fourteen (14) days after the Scheduling
5 Order issues or by date certain set pursuant to the Scheduling Order.

6 Defendant YDS will propound written discovery and depose Plaintiff.

7 Defendant YDS proposes the discovery cut-off, including hearings on
8 discovery motions, be February 1, 2020.

9 Defendant YDS proposes initial expert exchange is November 1, 2019;
10 rebuttal exchange is November 15, 2019; and expert discovery cut-off is
11 November 30, 2019.

12
13 **K. DISPOSITIVE MOTIONS**

14 The Parties anticipate filing motions for summary judgment or, in the
15 alternative, motions for summary adjudication on the issues depending on what is
16 revealed in discovery.

17 **Plaintiff:**

18 The issues in this case stem from a question of whether the accessibility
19 barriers on the Property violate the ADA and Unruh Civil Rights Act. A
20 determination of these issues will depend on inquiries of (1) whether Defendant is
21 responsible under the law to remove/remediate the barriers; (2) whether the
22 Plaintiff has standing to seek either damages and/or injunctive relief; and (3) the
23 nature and extent of damages.

24 **Defendant YDS:**

25 Defendant will show as a matter of law Defendant YDS is not liable.
26

27 **N. ALTERNATIVE DISPUTE RESOLUTION ("ADR") PROCEDURE**
28

1 **SELECTION**

2 In the event that this matter is not expeditiously resolved, the Parties select
3 ADR Procedure No. 2 as the settlement mechanism under Local Rule 16-15.4.
4 ADR Procedure No. 2 states, “[t]he parties shall appear before a neutral selected
5 from the Court’s Mediation Panel.”
6

7 **O. SETTLEMENT EFFORTS**

8 The Parties have communicated informally about settlement and closure.
9 These informal discussions are still in their early stages.
10

11 **P. PRELIMINARY TRIAL ESTIMATE**

12 The trial is expected to take four (4) days. Plaintiff anticipates 4-5
13 witnesses, including an expert to testify at trial.

14 Defendant has requested a jury trial. Defendant anticipates 4-5 witnesses.
15

16 **Q. TRIAL COUNSEL**

17 For Plaintiff: Joseph R. Manning, Jr., Michael J. Manning, and Craig G.
18 Cote.

19 For Defendant: Michael Reiter
20

21 **R. INDEPENDENT EXPERT OR MASTER**

22 The Parties do not believe an independent expert or master is necessary.
23

24 **S. OTHER ISSUES**

25 Defendant proposes that all unserved defendants will be dismissed on April 20,
26 2019. The Parties are unaware of any other issues.
27

Respectfully submitted,

Dated: January 24, 2019

MANNING LAW, APC

By: /s/ Joseph R. Manning, Jr.

Joseph R. Manning, Jr.

Michael J. Manning

Craig G. Cote'

Attorneys for Plaintiff

Dated: January 24, 2019

MILLIGAN, BESWICK, LEVINE &
KNOW LLP

By: /s/ Michael Reiter

Michael Reiter

Attorney for Defendant

Certification Pursuant to Local Rule 5-4.3.4(a)(2)(i)

Pursuant to Local Rule 5-4.3.4(a)(2)(i), I, Joseph R. Manning, Jr., hereby do attest that all signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

Dated: January 24, 2019

MANNING LAW, APC

By: /s/ Joseph R. Manning Jr., Esq.

Joseph R. Manning Jr., Esq.